

Int. Sec.
Revenue
Cincinnati, O.

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APR 21 1992

Date 1-30-92

Received
EP/SC DIV

Signature [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

DEC 20 1991

Employer Identification Number: [REDACTED]
Key District: [REDACTED]

Dear Applicant:

We have considered your application for recognition of exemption under section 501(c)(3) of the Internal Revenue Code.

The information submitted indicates that you were incorporated on [REDACTED]. Your purpose is to raise funds for the physically and mentally handicapped and other related activities, including but not limited to assistance for the elderly.

Your sole activity is conducting bingo and pull-tab games held [REDACTED] nights a week in a rented building. Funds derived from the games are used primarily for your operation of the bingo and pull-tab games such as prizes, supplies, rent, utilities and other operating expenses. Funds are also used for distribution to charitable organizations or for charitable purposes.

At this time the members of your organization are only [REDACTED] and [REDACTED] who also are your President and Treasurer, respectively. You rent your facility from [REDACTED], husband of [REDACTED]. Your rental was \$[REDACTED] a month prior to [REDACTED]. Per your lease agreement with [REDACTED], rent is increased to \$[REDACTED] a month effective [REDACTED].

Your submitted statement of income and expenses from [REDACTED] through [REDACTED] shows the following:

Gross receipts:
Bingo
Pull-tab
Total

\$ [REDACTED]
[REDACTED]
\$ [REDACTED]

Prizes paid	
Net receipts from games	
Other receipts - sale of stuffed animals	
Total receipts	
Payments:	
Bingo and pull-tab expenses	
Contributions	
Rent	
Total payments	
NET	\$

Section 501(c)(3) of the Code provides exemption from federal income tax of organizations organized and operated exclusively for charitable or other exempt purposes.

Section 1.501(c)(3)-1(c)(1) of the Income Tax Regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an organization is not organized and operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. Thus, to meet the requirements of this subdivision, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creators, shareholders of the organization or persons controlled, directly or indirectly, by such private interests.

Rev. Rul. 64-182, 1964-1 (Part 1) 186, holds that an organization that is organized exclusively for charitable purposes, derives its income principally from commercial business operations and carries out its charitable purpose by aiding other organizations through contributions and grants commensurate in scope with its financial resources, qualifies for exemption under section 501(c)(3) of the Code.

In Make a Joyful Noise, Inc. v. Commissioner, 56 T.C.M. 1003 (1989), the Court concluded that the petitioner was not exempt

under section 501(c)(3) of the Code. The petitioner was organized to operate a camp for disadvantaged children and elderly citizens. While the organization maintained this goal during its more than 5 years of operation, no progress was made toward its accomplishment. The organization is principally engaged in the conduct of bingo games. The Court did not place any reliance on the organization's charitable goals when evidence showed that no progress had been made towards the achievement of those goals.

In Help The Children v. Commissioner of Internal Revenue, 28 T.C. 1128 (1957), the Court held that an organization engaged in fund-raising activities through operation of bingo games and whose actual charitable contributions consisted of contributions to charitable institutions of insubstantial amounts when compared to its gross receipts from operation of bingo games, does not qualify for exemption under section 501(c)(3) of the Code. See also Piety, Inc. v. Commissioner of Internal Revenue, 82 T. C. 193 (1984) and P.L.L. Scholarship Fund v. Commissioner of Internal Revenue, 82 T.C. 196 (1984).

In American Campaign Academy v. Commissioner, 92 T.C. 66, the Tax Court was called on to decide whether benefit to third parties, who were not members of the organization, would prevent the organization from being recognized as an exempt organization within the meaning of section 501(c)(3) of the Code. The Court concluded that the organization could not confer benefits on disinterested persons and still service public purposes within the meaning of section 1.501(c)(3)-1(d)(1)(ii) of the regulations. The Court states as follows:

Moreover, an organization's conferral of benefits on disinterested persons may cause it to serve 'a private interest' within the meaning of section 1.501(c)(3)-1(d)(1)(ii), Income Tax Regs. Christian Stewardship Assistance, Inc. v. Commissioner, 70 T.C. 1037 (1978). See Kentucky Bar Foundation v. Commissioner, 71 T.C. 921 (1982), Aid to Artisans, Inc. v. Commissioner, 71 T.C. 202 (1978)..... In this connection, we use 'disinterested' to distinguish persons who are not private shareholders or individuals having a personal and private interest in the activities of the organization within the meaning of section 1.501(a)-1(c) Income Tax Regs.

In International Postgraduate Medical Foundation v. Commissioner, T.C.Memo 1989-36 (1989), the court concluded that the petitioner was not described in section 501(c)(3) of the Code.

The petitioner was organized for the purpose of providing continuing medical education to physicians. To this end, it took physicians on three week tours throughout the world. The petitioner shared offices with a for-profit travel agency which was controlled by the petitioner's principal officer. It made all its travel arrangements through the agency.

The court found that a substantial purpose of the petitioner was benefitting the for-profit travel agency. It concluded that:

When a for-profit organization benefits substantially from the manner in which the activities of a related organization are carried on, the latter organization is not operated exclusively for exempt purposes within the meaning of (section) 501(c)(3), even if it furthers other exempt purposes.

The information submitted indicates that you intend to accomplish your charitable purpose by raising funds through the operation of bingo and pull-tab games and contributing funds derived therefrom to provide financial support to charitable organizations or for charitable purposes. Your financial statements which show the results of your actual operations indicate, however, that your distributions for charity is a mere 1% or less of your gross receipts. Your charitable giving represents only an insubstantial amount of your gross receipts. This compares unfavorably with your substantial use of the rest of your funds for bingo and pull-tab related expenses.

Since your charitable grants are not commensurate in scope with your financial resources, you are not engaged in activities that will primarily accomplish or further one or more exempt purposes under section 501(c)(3) of the Code. Therefore, you are not operated exclusively for one or more exempt purposes pursuant to section 1.501(c)(3)-1(c)(1) of the regulations.

You are distinguishable from the organization described in Rev. Rul. 64-182. Whereas that organization makes contributions that are commensurate in scope with its financial resources, your contributions to support charitable functions are insubstantial when compared to your gross receipts. You are analogous to a great extent to the organization described in Help The Children v. Commissioner of Internal Revenue held by the court not to qualify for exemption under section 501(c)(3) of the Code. See also Make a Joyful Noise, Inc. v. Commissioner.

In addition, not only is charity not being served to a significant extent but you are providing significant benefits to private interests. American Campaign Academy and International Postgraduate Medical Foundation make it clear that exemption will not be retained when the activities of an exempt organization impermissibly benefit third parties. In your case, you pay a significant portion of your income to [REDACTED], the husband of one of your two officers. There is no evidence in the file to indicate that you looked for other facilities nor is there any evidence that you considered other facilities nor is there any evidence in the file to indicate whether you are paying fair market value or not. You have agreed to a rent increase of [REDACTED] percent; this is highly unusual and leads to the conclusion that you are operating to serve the business interests of [REDACTED] and that your dealings with [REDACTED] are not at arm's-length.

Therefore, we conclude that you do not qualify for exemption under section 501(c)(3) of the Code because your charitable giving program is not commensurate in scope with your financial resources. In addition, you are operated for private rather than public purposes within the meaning of section 1.501(c)(3)-1(d)(1)(ii) of the regulations.

Contributions to you are not deductible under section 170 of the Code.

You are required to file federal income tax returns on Form 1120.

You have the right to protest our ruling if you believe that it is incorrect. To protest, you should submit a statement of your views, with a full explanation of your reasoning. This statement must be submitted within 30 days of the date of this letter and must be signed by one of your officers. You also have a right to a conference in this office after your statement is submitted. If you want a conference, you must request it when you file your protest statement. If you are to be represented by someone who is not one of your officers, he/she must file a proper power of attorney and otherwise qualify under our Conference and Practice Requirements.

If you do not protest this ruling in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Code provides, in part, that a declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the District Court of the United States for the District of Columbia determines that

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the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within 30 days, this ruling will become final and copies will be forwarded to your key District Director in Cincinnati, Ohio. Thereafter, if you have any questions about your federal income tax status, including questions concerning reporting requirements, please contact your key District Director.

The appropriate State Officials will be notified of this action in accordance with section 6104(c) of the Code.

Sincerely yours,

(Signed) [REDACTED]

[REDACTED]
Chief, Exempt Organizations
Rulings Branch 2

cc: DD, Cincinnati
Attn.: EO Group